claimed' of the said vehicle bearing registration no PY 4598 prima facie becomes the legal owner and therefore has a better title. However, since the plaintiff is disputing the defendant's title to the said vehicle, in my opinion, the onus is on the plaintiff to show that the defendant had acquired title of the said vehicle illegally or without proper inquiry or that he was not a purchaser in good faith.

Mr Lim Chee Sin (PW1) was the main witness for the plaintiff. At the material time, he was the plaintiff's branch manager, and was personally in charge of the hiring of the said vehicle to the hirer upon the execution of P1. He was also responsible for lodging the necessary RIMV forms including producing the vehicle registration book for indorsing the 'ownership claimed' at the RIMV office in Penang. Next, he testified that after he discovered that the hirer did not pay any instalment, he issued the fourth schedule notice, AB8, and notice to repossess, AB9, dated 25 November 1977. However, it was about this period that the plaintiff must have suspected that both the hirer and the vehicle were missing. According to PW1, he personally made inquiries and discovered that the registration numbers had been changed and indorsement of the 'ownership claimed' cancelled. After tracing the whereabouts of the said vehicle, PW1 went to Ipoh on 6 January 1978 to repossess it from the said company.

Encik Mohd Jamil bin Haji Mohd Noor (PW2), the Assistant Director, RIMV, Ipoh, testified that his office did not have the files for vehicles no AV 3366 and PY 4598 as both were missing.

The defendant called three witnesses to testify that the hire-purchase transactions in respect of vehicle registration no PY 4598 were proper and legal and in accordance with normal business transactions. According to Mr Kuan Kok Leong (DW2), Managing Director of Intan Credit Sdn Bhd, on 5 December 1977 he introduced Kwong Soon Cheong Sdn Bhd to the defendant company in order to obtain hire-purchase finance for vehicle PY 4598. He conducted a search at the office of RIMV in Ipoh for vehicle PY 4598. He checked the registration card and compared with RIMV records and found it to be in order. He ascertained that one Au Kam Fong was the registered owner who wanted to sell the said vehicle to Kwong Soon Cheong Sdn Bhd.

At the material time, Mr Foo Seh Loon (DW3) was the branch manager of the defendant company. He was the officer who signed the relevant documents on behalf of the defendant. He stated that before the defendant released the purchase sum of the said vehicle to Intan Credit Sdn Bhd, he had ascertained the particulars of the said vehicle, that there was no previous 'ownership claimed' being indorsed on the vehicle registration card. He also relied on the dealer, Intan Credit Sdn Bhd and according to DW3 the defendant would not conclude the hire-purchase transaction had he known that the said vehicle was subject to any 'ownership claimed' by a third party.

In evaluating the evidence of PW1 for the plaintiff, I find the witness merely traced the various movements of the said vehicle until its repossession on 6 January 1978. On the basis of his evidence, I also find the plaintiff had failed to adduce any evidence to show that he has a better title to the said vehicle. On the other hand, based on the evidence adduced by DW2 and DW3, I am satisfied that the defendant company was a purchaser in good faith of the said vehicle from Au Kam Fong and that upon the advice of DW2 the defendant had accepted the purchase and granted hire-purchase finance to Kwong Soon Cheong Co Sdn Bhd without notice of any defect in the seller's title to the said vehicle. I am also satisfied that the defendant had made adequate enquiries in the ordinary course of business to determine that the said vehicle was free from any defect as to its title.

Mr Chin, counsel for the plaintiff, in his submission conceded that the defendant was an innocent party and counsel's complaint was that the defendant company through its agent, Intan Credit Sdn Bhd, should have been suspicious and put on guard when within a span of three months, there were three transfers made or registered on the vehicle registration card.

In my judgment, on a balance of probability, I find the plaintiff has failed to prove his case and this action is dismissed with costs.

*Order accordingly.*

Solicitors: *Chin Fook Yen & Co; KC Lai & Co.*

Reported by *Ng Sheau Jiuan*

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## Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang

HIGH COURT (KUALA LUMPUR) – ORIGINATING MOTION NO A4 OF 1985
HARUN J
19 AUGUST 1988

*Local Government – Rating – Annual value – Construction cost and age of building – Rates on percentage basis – Local Government Act 1976, s 145*

The appellants were owners of lands on which they operated two petrol pumps and service stations in Klang. By separate notices dated 19 November 1983, the municipality informed them that the annual value of those two properties had been revised to $42,000 each from the 1976 assessment of $20,000 and $22,000 respectively effective from 1984. The appellants' objection under s 42 of the Local Government Act 1976 was turned down.

The valuers for both parties agreed that the value of lands for both properties should be the same. However, they disagreed on the rate. The municipality said that it was $40 psf while the appellants said it was $30 psf. The valuers took different measurements of the buildings and facilities. As to the capitalization rate the appellants said that the rate of return expected for investments in petrol stations should be 7% of the effective capital value to arrive at the annual value. The municipality valuer agreed but only in respect of one of the properties and not the other which he said should be 8.25%.

**Held,** allowing the appeal:

(1) Taking all factors into account, the lands should be valued at $35 psf inclusive of site improvements.

(2) The court should accept the measurements given by the appellants' valuers and the construction costs bearing in mind the differences in the age of the buildings and making allowances for depreciation therefor.

(3) If a rate is based on percentage basis then it should be the same in all cases but the resultant actual returns will vary according to size, facilities and location of the station. In this case the capitalization rate for both properties should be 7% of the effective capital value.

**Legislation referred to**
Local Government Act 1976 ss 142, 145

*Robert Lazar* (*Ms Sar Sau Yee* with him) for the appellants.
*Mohd Yacob Karim* for the respondent.

*Cur Adv Vult*

**Harun J:** This is an appeal against the decision of the Klang municipality under s 145 of the Local Government Act 1976.

The appellants are the registered owners of lands on which they operate two petrol pumps and service stations which are situated along Persiaran Raja Muda Musa (the road connecting Klang town with Port Klang) diagonally opposite each other and are known as: (a) Ban Seng Leong Service Station; and (b) Eastern Auto Centre Service Station. The road is a dual carriageway. Ban Seng Leong serves traffic from Port Klang and Eastern Auto, the traffic from Klang town.

By separate notices dated 19 November 1983, the appellants were informed that the annual value of these two properties had been revised to $42,000 each from the 1976 assessment of $20,000 (Ban Seng Leong) and $22,000 (Eastern Auto) effective from 1984.

The appellants raised an objection under s 142 which was heard on 20 July 1984. By letter dated 22 January 1985, the municipality informed the appellants that the revised annual values had been confirmed. Hence this appeal.

According to the appellants, the annual value for the two properties by the municipality have been valued beyond its rateable value and should be: (a) Ban Seng Leong – $24,000; and (b) Eastern Auto – $30,800. The valuations by both parties have been made by professionally qualified valuers. They both used the Contractor's Test Method in the absence of any sales or rentals of petrol stations in the locality if the Comparison Method is used. It appears that the Contractor's Test Method is standard practice used by local authorities when assessing petrol stations for rating purposes. This method is based on the assumption of what a hypothetical tenant would pay as rent for the petrol station in relation to the cost of constructing the station. The two valuers arrived at their respective figures as follows:

(1) Ban Seng Leong Service Station

(a) Municipality valuer

| | | | |
|---|---|---|---|
| Land : | 9,900 sq ft ($40 psf) | | $396,000 |
| Development | | | |
| Land area : | 9,900 sq ft ($5 psf) | $49,500 | |
| Office : | 486 sq ft ($40 psf) | $19,440 | |
| Canopy : | 400 sq ft ($15 psf) | $ 6,000 | |
| Lubrication bay : | 870 sq ft ($25 psf) | $21,750 | |
| Underground tank : | 8,000 gallons ($2 pg) | $16,000 | $112,690 |
| Estimated capital value | | | $508,690 |
| Capitalization rate at 8.25% | | | x 0.825 |
| | | | $ 41,966 |
| Annual value – say | | | $ 42,000 |

(b) Appellants' valuer

| | | | |
|---|---|---|---|
| Land area : | 10,080 sq ft ($30 psf) | $302,400 | say $302,000 |
| Building | | | |
| Office : | 224 sq ft ($13 psf) | $ 2,912 | |
| Canopy : | 924 sq ft ($8 psf) | $ 7,392 | |
| Lubrication bay and toilet bay : | 1,064 sq ft ($10 psf) | $ 10,640 | |
| Drum yard: | 779 sq ft ($6 psf) | $ 4,674 | |
| Underground tanks : | 5 units at $2,500 per tank | $ 12,500 | |
| Ramp | $3,500 each | $ 3,500 | |
| | | $ 41,618 | say $ 42,000 |
| Estimated capital value | | | $344,000 |
| 7% to arrive at annual value | | | $ 24,080 |
| | | | say $ 24,000 |

(2) Eastern Auto Service Station

(a) Municipality valuer

| | | | |
|---|---|---|---|
| Land : 11,116 sq ft ($40 psf) | | | $444,640 |
| Development | | | |
| Land area : 11,116 sq ft ($5 psf) | $55,580 | | |
| Office : 440 sq ft ($40 psf) | $17,600 | | |
| Canopy : 2,208 sq ft ($15 psf) | $33,120 | | |
| Lubrication bay : 560 sq ft ($25 psf) | $14,000 | | |
| Underground tank : 9,000 gallons ($2 pg) | $18,000 | | |
| Basement store : 660 sq ft ($25 psf) | $16,500 | say | $154,800 |
| Estimated capital value | | | $599,440 |
| Capitalization rate at 7% | | | x 0.7 |
| | | | $ 41,960 |
| Annual value | | | $ 42,000 |

(b) Appellants' valuer

| | | | |
|---|---|---|---|
| Land area : 11,116 sq ft ($30 psf) | $333,480 | say | $332,000 |
| Building | | | |
| Office : 286 sq ft ($32 psf) | $ 9,152 | | |
| Canopy : 2,778 sq ft ($20 psf) | $ 55,560 | | |
| Lubrication bay/stores/ toilets : 714 sq ft ($26 psf) | $ 18,564 | | |
| Basement Store : 560 sq ft ($20 psf) | $ 11,220 | | |
| Underground : 4 units at $2,500 per tank | $ 10,000 | | |
| Ramp : $3,500 each | $ 3,500 | | |
| | $107,976 | say | $108,000 |
| Estimated capital value | | | $440,000 |
| 7% to arrive at annual value | | | $ 30,800 |
| | | say | $ 30,800 |

*Land valuation*

Both valuers are agreed that the value of the lands for both properties should be the same. They, however, disagree on the rate. The municipality says it is $40 psf and the appellants say it is $30 psf.

The municipality relies on comparables of actual sales of lands for petrol stations in Subang Jaya ($18-$32.50 psf); Puchong ($33.24 psf); Taman Tun Dr Ismail ($25 psf); and Kuala Lumpur ($90 psf). There were no such sales in the locality except the lands on which Eastern Auto stands which were sold to the appellants on 20 December 1968 at $13.04 psf. The only other evidence regarding the land is the fact that part of the Ban Seng Leong land was acquired by the government for road-widening purposes in 1979 for which the government paid compensation at the rate of $30 psf which was accepted by the appellants. Both valuers used Subang Jaya comparables. Taking all factors into account, in my judgment the lands should be valued at $35 psf inclusive of site improvements. In the case of Ban Seng Leong, a deduction of 3,564 sq ft should be made as this was the area acquired by the government thus reducing the rateable area to 6,336 sq ft.

*Buildings*

The valuers have taken different measurements of the same buildings and facilities, eg according to the municipality valuer the office space of Ban Seng Leong is 486 sq ft but according to the appellants' valuer it is 224 sq ft. On the other hand, according to the municipality valuer the canopy is 400 sq ft but according to the appellants' valuer it is 924 sq ft. From the oral evidence given by both valuers and a comparison of their respective valuation reports, I accept the measurements given by the appellants' valuers and the construction costs bearing in mind the differences in the age of the buildings and making allowances for depreciation therefor.

*Capitalization rate*

The appellants say the rate of return expected for investments in petrol stations should be 7% of the effective capital value to arrive at the annual value. The municipality valuer agrees but only in respect of Eastern Auto and not Ban Seng Leong which he says should be 8.25%. His explanation for this difference is that Eastern Auto is larger and therefore the effective capital value is higher but the capitalization rate is lower. He says the lower the effective capital value, the higher the capitalization rate. I cannot accept this argument. If a rate is based on a percentage basis, then it should be the same in all cases but the resultant actual returns will vary according to size, facilities and location of the station. Ban Seng Leong was built in 1957 whereas Eastern Auto was built in 1970. Actual sales figures show that Eastern Auto is doing better than Ban Seng Leong. It would not be fair that both should pay the same amount in rates. In the circumstances, I hold that the capitalization rate in both cases should be 7% of the effective capital value.

For the reasons stated I would allow the appeal and award as follows:

(a) *Ban Seng Leong*

| | | |
|---|---|---|
| Land – 6,336 sq ft ($35 psf) | | $221,760.00 |
| Buildings etc | | 41,618.00 |
| Estimated capital value | | $263,378.00 |
| Annual value at 7% | | 18,436.46 |
| | say | $18,500.00 |

(b) *Eastern Auto Centre*

| | | |
|---|---|---|
| Land – 11,116 sq ft ($35 psf) | | $389,060.00 |
| Buildings etc | | 107,976.00 |
| Estimated capital value | | 497,036.00 |
| Annual value at 7% | | 34,792.52 |
| | say | $34,800.00 |

(c) Costs.

*Order accordingly.*

Solicitors: *Shearn Delamore & Co*; *Yacob & Rakan-Rakan.*

Reported by *Al-Mansor Adabi*

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## Classic Video Distribution Sdn Bhd v Asia Television Ltd

HIGH COURT (IPOH) – CIVIL SUIT NO 22-232-87
ABDUL MALEK J
17 MARCH AND 7 APRIL 1988

*Civil Procedure – Injunction – Application by defendant for writ of summons to be struck off – Application for interim injunction to be set aside – Defendant out of jurisdiction – Security for costs – Agreement giving exclusive licence to produce, manufacture and distribute video programmes – Agreement terminated – Leave granted to serve outside jurisdiction and not to issue writ out of jurisdiction – Delay in service of injunction*

In this case the plaintiff applied for an injunction to restrain the defendant from terminating the agreements which had given the plaintiff exclusive licence to produce, manufacture and distribute video programmes belonging to the defendant. The plaintiff also applied for leave to serve the order of the interim injunction and the notice of the writ of summons on the defendant in Hong Kong. The defendant applied to strike off the writ of summons and to set aside the order for the issuance and service of the writ of summons and also to set aside the interim injunction. It appeared that there had been a delay in the service of the interim injunction on the defendant. In reply to the application of the defendant, the plaintiff applied for an order that the purported termination of the agreements be declared null and void and that the agreements still subsist.

**Held,** dismissing the application:

(1) As the defendant was outside the jurisdiction, it should pay $10,000 as security for costs.

(2) As no leave had been obtained to issue the writ out of jurisdiction, the leave to serve the notice of writ would be rendered meaningless.

(3) In the circumstances an order in terms of the defendant's application would be granted and the senior assistant registrar be ordered to fix a date for the assessment of damages, if any, occasioned by the defendant as regards the grant of the interim injunction.

**Cases referred to**

1 *Aeronave SPA & Anor* v *Westland Charters Ltd & Ors* [1971] 3 All ER 531 (folld)
2 *New Malaya Co Ltd* v *Abu Bakar* [1961] MLJ 151 (folld)
3 *The Beauty Orchid II; Pacific Corporation Traders* v *Beauty Orchid II Owners & Ors* [1977] 2 MLJ 83 (refd)
4 *M'Neil* v *Garratt* 41 ER 427 (refd)

**Legislation referred to**

Rules of the High Court 1980 O 6 r 6, O 11, O 18 r 1

*Leonard Peters* for the plaintiff.
*SF Wong* for the defendant.

*Cur Adv Vult*

**Abdul Malek J:** On 7 March 1988 the defendant had filed a summons-in-chambers (encl 11) applying for the following orders:

(1) an order that the issuance and service of the generally endorsed writ of summons and service of the order of court dated 15 December 1987 be set aside;
(2) an order that the generally endorsed writ of summons dated 15 December 1987 be struck off under O 18 r 19 of the High Court Rules 1980 or under the inherent jurisdiction of this honourable court;
(3) in the event prayers (1) and/or (2) be granted a further order that judgment be entered for the defendant against the plaintiff and the plaintiff be ordered to pay the defendant the costs incurred in relation to this suit;
(4) an order that the interim injunction granted vide order of court dated 15 December 1987 be unconditionally set aside and a date be fixed for the assessment of damages suffered by the defendant pursuant to the plaintiff's undertaking given to this honourable court for the grant of the said order;
(5) an order that the costs occasioned by this application be provided for; and
(6) any further or other reliefs this honourable court deems fit.

Upon a certificate of urgency, the hearing was fixed on 17 March 1988. One day earlier, on 16 March 1988, the plaintiff filed a summons-in-chambers (encl 16) praying for the following orders:

(a) that the purported termination of the agreements dated 28 October 1987 by a letter dated 26 February 1988 from the defendant's solicitors to the plaintiff be declared null and void;